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The Writ of Prohibition: Jurisdiction in Early Modern English Law, Indexes to Vols. 1-3

Charles Montgomery Gray

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**The Writ of Prohibition:
Jurisdiction in Early Modern English Law**

Charles M. Gray

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 - Oral addition to will, creating trust..... V. III, p. 160-163.
- Third party intervention (in ecclesiastical law)..... V. II, p. 75-78, 175-180, 218-231, 289-290.
- Thorne, Samuel..... V. I, p. 50.
- Tithes, General discussion..... V. I, p. xxxiii-xxxix.
- Many of the procedural and jurisdictional problems in these volumes arose from tithe suits. Substantive questions of tithe law are beyond the scope of Vols. I-III. The reader can, however, get an impression of the variety of tithe suits and of defendants' claims why tithes were not due.
- Tithes (1) The staple tithes, grain and hay, sometimes appear in the cases and are likely to be the subject of ones in which the product is not reported. Only suits for other products (which present more tithe-law problems than grain and hay) are indexed. Vol. III, Sect. I.F (p. 119 ff) is about a feature of tithe law only applicable to grain and hay.
- Animal products
- Barren cattle..... V. I, p. 77.
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 - Milk, cheese, calves.... V. I, p. 73, 358, 360-i; V. II, p. 175.
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- Tithes (1) (cont'd).
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 - Wood (distinguished by the law as between valuable timber and other forms, mainly useful as fuel); miscellaneous fuel products..... V. I, p. 63, 65, 195, 220, 263, 298; V. II, p. 165, 172; V. III, p. 10, 11, 18, 20, 22.
 - By products..... V. I, p. 190, 248, 251, 252, 257, 275, 285; V. II, p. 151, 157.
- Tithes (2) (a) Prescriptive commutation or *modus decimandi*..... V. II, p. 87-89, 109-112, 112-116, 131, 151-152, 166, 172-175; V. III, p. 27-28, 80.
- Note: Persons sued for tithes very commonly claimed that the tithe was commuted. The Prescriptive claim is the commonest form of claim for commutation. There are roughly 40 instances of this in Vol. I, rarely of intrinsic legal interest. Leafing through these cases would give a sense of the different kind of *modi* claimed. The context of Vols. II and III, on the other hand, allow for significant discussion of the *modus* as such.)
- Tithes (2) (b) Composition Real..... See Composition real.
- Tithes could also be commuted by Composition Real.
- Tithes (2) (c) Commutation by Contract..... V. I, p. 63, 65.
- Tithe payers and recipients could simply contract for a commutation (for any time up to the limit of their lives). Because these bargains made a difficulty for Prohibitions, they appear in this book. V. II, p. 71-72, 137, 137-138, 141-146, 171-172; V. III, p. 23-24, 95, 214.

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- Tithes (3) Exemption from tithes
- (a) Monastic lands..... See Monasteries, Dissolution of. monasteries before the Reformation was often tithe-exempt, either by privilege conferred under the law of the church or by prescription. When the monasteries were dissolved these exemptions were preserved by statute to donees and vendees of monastic land.)
 - (b) Land owned by ecclesiastical institutions (could be exempt by prescription in *non decimandi*)..... V. II, p 100-103.
 - (c) Land reclaimed from waste (temporarily exempt by statute)..... V. I, p. 68, 90, 137, 180, 263; V. II, p. 180.
- Tithes (4) Claims that no tithes were due resting on allegation that the person suing for them was not incumbent..... V. I, p. 62, 218, 234, 360; V. II, p. 122-124, 127-129, 160-174; V. III, p. 213-214, 220-222, 226, 256. Cf. Bounds of Parish.
- Note: Related are claims that the person suing for tithes, though incumbent in some parish, mistakenly alleged that the produce in question was grown in *his* parish.
- Tithes (5) Other Topics
- Access to tithes..... V. II, p. 118-119, 153-154; V. III, p. 51, 140-143.
 - Jure divino theory of tithes*..... V. II, p. 119-122.
 - Leases of tithes..... V. I, p. 64, 165, 166, 227; V. III, p. 29-31, 217-219.
 - Liability for tithes beyond the land occupiers' – executors', servants', vendees' V. I, p. 335; V. II, p. 71-72, 79-80; V. III, p. 139-140, 217-219.
 - Monarch's privileges respecting tithes..... V. I, p. 312-313; V. II, p. 109-112.
 - Products exempt *de jure* (but capable of tithability by custom)..... V. I, p. 158, 189; V. II, p. 154-157.
- Tithes (5) Other Topics (cont'd)
- Severance of tithes (legal "payment", conversion to recipient's property)..... V. II, p. 25-26; V. III, p. 15, 18-19, 119 ff. (Sect. I.F). Cf. Appropriation / Impropriation.
 - Trespass..... See Forms of Action at Common Law.
 - Two-witness rule
 - All cases in Vol. II, Sect. IV (p. 207 ff) concern the two-witness rule.
 - General discussion..... V. II, Sect. I (p. 1 ff) *passim*.
 - Other references..... V. I, p. 145-146, 165, 172, 302; V. II, p. 59, 104, 113, 137-138, 139-141, 144; V. III, p. 142-143.
 - Utrum*..... See Forms of Action at Common Law.
 - Verdict..... See Jury.
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 - Special..... V. I, p. xxvii, 177, 183-187, 242, 245, 256, 378; V. II, p. 90, 225, 237; V. III, p. 82, 154.
 - Vicar / Vicars..... See Parson and Vicar.
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 - White, Stephen D..... V. I, p. 50.
 - Wills..... See Testamentary jurisdiction of ecclesiastical courts.
 - Women, Legal status of..... V. II, p. 58-67, 216, 273, 276. V. III, p. 31-35, 228-229, 232-235, 237-241, 251-252, 257. Cf. Marital jurisdiction of ecclesiastical courts.

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The study is mainly based on the writ of Prohibition and its “inverse”, Consultation. For basic nature of these writs..... V. I, General introduction.

A few passages on the general theory of Prohibitions can be singled out from the many cases started by Prohibition that constitute most of the book..... V. I, p. 161-165, 175-177; V. II, p. 124-133, 194; V. III, p. 250-251.

Writs, Common law (miscellaneous) (1) (b)

Many Consultations reported are not separately indexed. Sometimes they merely execute final judgment in favor of defendant-in-Prohibition.

A special problem is raised by Consultations sought on a motion prior to judgment V. I, Sect. VII (p. 267 ff)

(In practice, such motions were commonplace and are not separately indexed.) is devoted to this issue.

For problematic instances outside V. I, Sect. VII..... See Formal Pleading in Prohibition Cases.

(Instances under this heading commonly concern whether formal pleading should be insisted on *or* Consultation on motion *considered*.)

Writs, Common law (miscellaneous) (1) (c)

A number of cases arising on *Habeas corpus* present issues similar to those arising on Prohibition..... These issues appear almost entirely in V. II, Sect. V.B (p. 337 ff).

Habeas corpus references... V. I, p. xxv-xxviii, lix, lxxii, 2.
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Writs, Common law (miscellaneous) (2) Other Writs

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Index for *The Boundaries of the Equitable Function*, included as an Appendix to Vol. III.

This index is intentionally limited. For additional information on the judges and lawyers, courts and procedures appearing in the appendix to Vol. III, see the indices to the three volumes.

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